

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DEON BROWN,

Claimant,

vs.

FLUORO SEAL INTERNATIONAL, L.P.,

Employer,

and

LIBERTY MUTUAL INSURANCE CO.
TWIN CITIES FIRE INSURANCE
COMPANY d/b/a THE HARTFORD,

Insurance Carriers,
Defendants.

FILED

JUL 31 2012

WORKERS' COMPENSATION

File Nos. 5036307
5040294
5040295

RULING RE:

REQUEST FOR

ORDER NUNC PRO TUNC

Defendant Liberty Mutual Insurance Company has filed a request for entry of an order nunc pro tunc regarding the section 85.21 petition on file in these claims. Liberty Mutual contends that the section 85.21 question was an issue properly raised at hearing and therefore should have been addressed in the proposed arbitration decision filed on May 1, 2012. Defendant The Hartford resists the motion.

The relevant prehearing and hearing procedural history will be set forth. These claims involve three specific incident dates of injury but a medical condition that clearly was rooted in employment activities. No carrier was willing to provide weekly indemnity and medical benefits, however.

On March 7, 2012, defendant Liberty Mutual filed an application and consent order for payment under Iowa Code section 85.21, which another deputy approved on March 9, 2012. A separate petition pursuant to Iowa Code section 85.21 requests that the 85.21 issues be heard along with causation issues at the hearing scheduled for March 27, 2012. Defendant The Hartford filed an answer to the petition re 85.21 on March 26, 2012, which answer did not address the issue of whether that insurer consented to hearing of the 85.21 issue on March 27, 2012.

Meanwhile, on March 21, 2012, defendant Liberty Mutual filed a motion to bifurcate all issues but for causation issues from hearing on March 27, 2012. Other

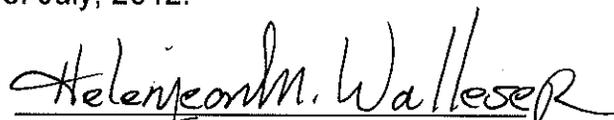
parties did not object to the motion to bifurcate and the undersigned sustained the bifurcation motion on March 26, 2012.

The scheduled hearing took place on March 27, 2012. The parties filed separate hearing reports for each file number and its respective date of injury. But for the notation: "85.21 petition on file" in two places on the report regarding the December 4, 2008 date of injury, File No. 5036307, the reports contain no reference to the section 85.21 petition. The 85.21 question is not listed as an issue for hearing on any of the hearing reports. Furthermore, before the taking of evidence, the undersigned expressly questioned counsel for all parties about the issues to be heard pursuant to the hearing reports. She did not mention the 85.21 issue, as that issue was not obvious from the hearing reports. Counsel for all parties agreed that the undersigned correctly had recited the issues. No counsel sought to add the 85.21 petition as an additional issue.

In the proposed arbitration decision, the undersigned dealt only with the issues related to causation and medical payment or reimbursement agreed to at hearing and listed on the hearing report. Therefore, she made no express findings and conclusions regarding the 85.21 issue. Therefore, an order nunc pro tunc addressing that issue in the arbitration decision filed May 1, 2012 is not appropriate as the 85.21 issue was not raised or heard at the March 27, 2012 hearing.

Therefore, it is ordered that defendant Liberty Mutual's request for entry of an order nunc pro tunc regarding the section 85.21 petition is denied.

Signed and filed this 31st day of July, 2012.


HELENEAN M. WALLESER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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HJW/srs